

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

THE PARKER VENTURE, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civ. Act. No.: 3:21-cv-41-ECM
)	(wo)
CHANCEY DESIGN PARTNERSHIP,)	
INC.,)	
)	
Defendant.)	

ORDER

This cause is before the Court on Defendant Chancey Design Partnership Inc.'s Motion for Leave to File Third-Party Complaint, (doc. 29), and Plaintiff Parker Venture, LLC's ("Parker Venture") Motion to Reconsider and in the Alternative and/or Additionally For Leave to Amend Complaint (doc. 34).

In response to the motion for leave to file a third-party complaint, Parker Venture informed the Court that it does not oppose the motion, and, in fact, stipulates to the filing of a third-party complaint against Stanley D. Lindsey & Associates, Ltd. (SDL). (Doc. 30). For good cause shown, the motion is due to be GRANTED.

In its motion to reconsider or, in the alternative, for leave to amend the complaint, Parker Venture again raises the arguments it raised in opposition to the motion to dismiss, but now also argues that it can allege facts to show that injury resulted to it from drawings made after the building project was assigned to it. In response, SDL states that while Parker Venture has produced evidence of later drawings, Parker Venture has offered no evidence

that SDL knew or should have known that Parker Venture had been assigned contracts. (Doc. 10 at 10 & n.3). A failure to produce evidence, however, does not establish that alleging additional facts would be futile. *See Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) (futility measured by whether complaint still would be subject to dismissal under the Rule 12 standard). The motion to reconsider is due to be DENIED, but the motion for leave to amend will be GRANTED.

Accordingly, it is hereby ORDERED as follows:

1. The Motion for Leave to File Third-Party Complaint (doc. 29) is GRANTED and Chancey Design Partnership, Inc. is given until **July 9, 2021** to file claims against SDL.
2. The Motion to Reconsider (doc. 34) is DENIED.
3. The Motion to Amend (doc. 34) is GRANTED and the Plaintiff is given until **July 9, 2021** to file a new complaint, complete unto itself, which brings claims against SDL that comply with the *Federal Rules of Civil Procedure*, including Rules 8, 10, and 11.

Done this 11th day of June, 2021.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE